PART II.

THE FOREST LAW.

CHAPTER IV.

FOREST LAW IN INDIA.

SECTION I.—THE REASON FOR THERE BEING A SPECIAL LAW RELATING TO FORESTS.

§ 1.—*The question stated.*

FOREST law consists of a series of special rules which it is found advisable to enact by the authority of the legislature, (1) for the protection of certain estates or properties called "Forests" (and may include protection of timber or other forest trees, and natural produce, generally, in lands outside the forests properly so called); and (2) of produce while it is in transit to the market or place of consumption.

Why should forests, and their produce in transit, be under a special law? Even in a country as little advanced as India, there is no such thing as unowned land, or forest-clad hills and jungles which belong to nobody. There is, therefore, no part of the provinces which form part of British India which is outside the pale of the ordinary law in any way; mischief (including mischief by fire), theft and trespass, for example, can be punished under the Indian Penal Code[1]. These legal provisions are applicable to forest cases; indeed, as they provide heavier sentences than the Forest law does, they may be very necessary in grave cases; but notwithstanding this, it is found better to put forests under a special law. The reasons for this are the following.

1 See sections 379, 425, 435, 441, &c. This subject will be gone into in a later chapter.

§ 2,—*Condition of forests in respect of rights of user is exceptional.*

In the first place, in a very great number of cases, the estates put under forest management will, owing to circumstances we shall afterwards examine, be found to be burdened with rights adverse to the public interest represented by the Government. It is necessary to provide for the due separation of the rights of the State and those of individuals, in order to prevent hardship to the individual on the one hand, and the destruction of the forest to the prejudice of the State on the other. For this purpose provision has to be made for determining claims for compensating rights in case they are incompatible with the existence of the forest, and for the proper regulation of the rights that exist, as well as to prevent their further growth. Such rights are not found—to anything like the same extent—in other properties, nor do they interfere with the management.

§ 3.—*Forest subject to variety of injury and difficult to protect.*

In the next place, there are so many different things included in a forest,—the soil, the grass, the undergrowth (bamboos and brushwood, &c.), the trees and all the parts of a tree—each liable to its own special injuries, that the acts of evasion of dues, petty theft, trespass, and mischief which constitute "forest offences" are extremely various; and it is much simpler to specify them distinctly in an Act, than to leave them to be, by explanation, and, perhaps, by highly technical argument, brought under the general terms of the ordinary law. No such difficulty arises with an orchard, a cornfield, or a garden; the purposes to which these are put are single, and the possible offences directly connected with them comparatively few, and such as are clearly covered by the terms theft, mischief, cattle-trespass, and so forth, of the ordinary criminal law.

Moreover, these properties are usually of small, or individually limited, extent; they can always be protected by gates and fences, which, on the ground of expense, is not always possible in the vast area occupied by natural forests.

§ 4.—*Forests vulgarly regarded as common property.*

There is also another and more important reason why the protection of forest estates is more difficult than that of other properties. The most illiterate peasant understands and feels that a cornfield, a garden, or a fenced orchard is not his to do what he likes in or with. But with a forest it is different. The habit of looking on forests as if they were "every man's" or "no man's" property is inveterate, and hence the temptation to acts of mischief and trespass which, if unrepressed, would seriously interfere with the management of the forest. To check such offences it is therefore desirable to make it clear to the public, what may not be done in a forest, and in set terms to prohibit acts which, if considered strictly and theoretically, may be already unlawful[2].

§ 5.—*Simple and summary penalties need to be specially provided.*

Not only is it very convenient that offences against the forest and its produce, and all breaches of such prohibitions, should be specifically catalogued by the law, but it tends to fairness as well as to effective repression of offences of this kind (which are generally petty in detail, though, of course, very troublesome in the aggregate), that they should be liable (in ordinary cases) to small penalties, which can be "summarily" inflicted, that is, after a speedy trial with a simple procedure and little formality. There will then be no occasion to set in motion the more formidable proceedings under the Penal Code, except in extensive cases of mischief by fire, timber theft, or fraud. It is, in short, desirable to have a special machine for the minor work—we do not need to set in

2. If the waste lands belong to Government (in the absence of any private rights), all the products are equally Government property, as accessories of the land (see Chapter I, page 5, *ante*). Consequently, no one can collect or remove such products without, technically at least, committing a theft. The question of the gravity of offence involved is, of course, another matter. Practically, a person does not pick your pocket unless he is a criminal by habit, whereas a man might steal some brushwood from a forest without being other than ignorant and unreflecting,—at any rate in a country as little civilised as India.

motion a steam hammer to crack a nut. All modern nations recognise the difference between small forest offences (*délit* of the French law), and crimes of a graver sort implying criminality of character in the perpetrator.

§ 6.—*Liability of forests to fire and other destructive agencies.*

Then, again, a forest is an estate which is peculiarly liable to accidents—some of these being the result of natural forces, cannot be controlled except indirectly; but one of the worst of these—*fire*—though sometimes originated by lightning, is far more often caused by the malice or carelessness of man; the red-hot stump of a cigar, the coal from a "huqa" negligently thrown down, or a camp fire left unextinguished, being sufficient in dry weather to give rise to a conflagration in which not only the growth of past years, but the hope of future generations, may be destroyed in a few hours. It is therefore necessary to make some special provisions regarding fire, and to punish not only acts of direct incendiarism, but acts of negligence which put the forest in danger. It is also reasonable to require the special assistance of the neighbours in extinguishing a forest fire.

§ 7.—*Interference with private forests in certain cases.*

Lastly, as regards the forest itself, a special law is needed to enable Government to interfere in certain cases, against the waste or total clearance, even of private forests, when they are in such a position that their removal would threaten the safety of neighbouring lands. In mountainous countries such clearance may give rise to land-slips, falls of stones and rock, erosion of ravines, and formation of torrents, while they may entail the diminution of water-supply in springs and streams at some times, and the excessive flooding of watercourses at others, whence disastrous floods in the great rivers may ultimately be caused. The preservation of belts of forest is the chief, if not the only known, preventive against such calamities. In level countries, forests may give important aid in checking the spread of malaria, in preventing land becoming marshy and

unwholesome; while in some cases they act as a protection against wind and storms, and against the spread of sands[3]. If such forests are ruthlessly destroyed, the results, direct or indirect, to a very wide extent of country, may be deplorable.

§ 8.—*Special need for interference with transit of produce.*

And there is another branch of forest law. It is not sufficient to afford protection merely within the limits of the forest itself; the produce of the forest must be followed in transit, whether by land or by water. In the first place, unless such produce can be kept to certain usual routes, and can be examined at certain points, it is obvious that the public forests may be robbed with impunity. Either entire loads of stolen timber could be got out at night, or excess quantities fraudulently obtained, be included in, and concealed under, produce lawfully purchased. Such protection is then needed, directly, in the interest of the public revenue, and indirectly, for the safety of the forest itself. The control of produce is also very much in the interest of honest owners of forest produce in transit. This is especially true in those parts of India and in British Burma where the chief means of exporting timber from forests (perhaps far away in the hills) is the floating of logs down the rivers. Timber and bamboos while in transit in this way are, as the Germans express it, "*angreifbar*"—particularly easy to be made away with.

Consequently, it is necessary not only to allow of the stoppage and examination of produce in transit, and to levy fees to cover the expense of this supervision, but it is also necessary to protect owners by registering the marks used to indicate property in timber, by undertaking the control and police of rivers used for transport

[3] It will be observed that I make no mention of the question of increasing the rainfall. Our knowledge on this interesting question is not yet sufficiently matured to make it the ground of direct legislative interference. I therefore confine myself to some of the no less important cases in which the protective effects of forest are quite beyond dispute. It is curious that writers who call in question what they call the "climatic" effects of forest, invariably appeal to the rainfall question on which we do not insist, and ignore the points on which we do rely.

of timber, and by taking under State protection all drift and unmarked timber.

§ 9.—*Special service to be vested with powers, &c.*

Again, the great variety of tasks which even this brief sketch shows to be imposed by the State management of forests, obviously necessitate a *special service* of forest officers, who constitute at once a forest police for protection and surveillance; a managing agency to handle the estates, keep their accounts, and realise their revenues; and a professional staff to direct and carry out works of utilisation, regeneration, and improvement. Such a service needs to be organised, to be vested by law with certain powers of arresting offenders, interposing to prevent offences, and demanding help in the case of fire or other danger.

These are the principal reasons, though further ones may be found in various text-books[4], which have rendered it a matter of well-

[4] See, for example, the introductory chapters of Grabner. It will not be necessary for me to allude to the *importance* of forests as making them worthy of special legislation. To understand fully this subject, we must understand also the place that forests occupy in the economy of nature, and that obviously is beyond the scope of a Manual like this. From the earliest times, however, the value of forests has been recognised, if not fully understood or accounted for. Cicero speaks of forests as "*subsidium belli, ornamentum pacis.*" Pliny calls them "*summum munus hominibus datum,*" and such like quotations from early writers might be multiplied indefinitely. I will only quote two brief passages to illustrate this subject. One is from an old English writer of the 16th century (Manwood): the other is from a modern German author (Eding). These show the ancient and modern conception of forest in its connection with law. The passage from Manwood is rather curious, as showing that at an early date not only was the "game question" appreciated, but also the more solid advantages to be derived from forests. He says:—"If a forest of the King's be carefully and diligently looked unto, kept and preserved as it ought to be, by good and profitable officers, who have the charge and care thereof committed unto them, then there doth grow unto the King by a forest especially these two benefits, that is to say: *first*, the plenty and increase of deer, as well for the provision of venison for the King's Court, as also for the princely delight and pleasure of the King to hunt for his recreation, when His Grace is wearied with the burden of cares in matters of the common weal; *secondly*, the great woods and timber trees, as well of his subjects, as of his own demesne woods being within the forests, are most especially preserved thereby, to be in readiness when the King shall have need of them, which, otherwise, would be cut down and destroyed: for the slender and negligent execution of the Forest laws hath not only been the decay and destruction of the deer almost in all